**UNITED STATES DEPARTMENT OF COMMERCE**
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| 07/646,855 | 01/28/91 | POMPEI F | EX87-01AZ |

| EXAMINER |
|---|
| LACYK,J |

HAMILTON, BROOK, SMITH AND REYNOLDS
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| ART UNIT | PAPER NUMBER |
|---|---|
| 3305 | 9 |

DATE MAILED: 07/14/92

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 3/4/92 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), — days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

1. ☐ Notice of References Cited by Examiner, PTO-892.
2. ☐ Notice re Patent Drawing, PTO-948.
3. ☒ Notice of Art Cited by Applicant, PTO-1449.
4. ☐ Notice of Informal Patent Application, Form PTO-152
5. ☐ Information on How to Effect Drawing Changes, PTO-1474.
6. ☐ _____.

**Part II SUMMARY OF ACTION**

1. ☒ Claims 1-9 AND 19-29 are pending in the application.

   Of the above, claims _____ are withdrawn from consideration.

2. ☒ Claims 10 - 18 have been cancelled.

3. ☒ Claims 1-9 are allowed.

4. ☒ Claims 19-29 are rejected.

5. ☐ Claims _____ are objected to.

6. ☐ Claims _____ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____. has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.

13. ☐ Since this application apppears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAM ACTION

Since the application had originally included claims 11-18, newly presented claims 11-21 have been renumbered as claims 19-29 and are hereafter referred to by their renumbered claim numbers.

Claims 19 and 24 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 24, lines 8-9, "the distal end of the extension" and "the detector" lack positive antecedent basis. Also in claim 19, line 4, "detector" should be --extension--.

Claims 19-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 23 of U.S. Patent No. 4,993,419. Although the conflicting claims are not identical, they are not patentably distinct from each other because the different terminology is considered to be an obvious change in the scope of the invention.

Claims 21-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7-8 of U.S. Patent No. 5,012,813. Although the conflicting claims are not identical, they are not patentably distinct from each other because for the same reasons discussed with respect to claims 19-20.

The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is

primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. § 1.78(d).

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 24-29 are rejected under 35 U.S.C. § 103 as being unpatentable over Fraden in view of Pompei et al.

Fraden discloses a temperature sensor disposed within a "can" or housing in which the housing has a barrel (14) or "guide" having a first internal diameter extending into a rear volume of a larger diameter which houses the sensor. Fraden discloses (column 4, lines 25-27) that thermopiles may be used. The outer surface can be tapered (see Fig. 6) to connect to the larger rear volume. Fraden discloses (column 2, lines 50-54) that

the length of the barrel determines the angle of view. Although Fraden doesn't specifically disclose using a lens at the end of the device, Pompei et al discloses a similar radiation detector that uses both the length of the barrel and certain lens to control the field of view (see Figs 3 and 7) to the desired angle. Therefore, a modification of Fraden to include a lens would have been obvious since this would allow for better control of the angle of the field of view.

Applicant's arguments filed March 4, 1992 have been fully considered but they are not deemed to be persuasive. With regard to claims 24-29, applicant argues that the inner surface of the Fraden barrel is shiny, i.e., therefore reflective and because of this produces angles much greater. However, claim 24 fails to include any such limitation and still fails to define over the art. Further, claim 27 claims that the inner surface is reflective. It is unclear why applicant argues that the Fraden device will not produce the correct angles because it is reflective since it appears that the claimed device is also reflective.

Claims 1-9 are allowable over the prior art of record.

Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL.** See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a). The practice of

automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication should be directed to John Lacyk at telephone number (703) 308-2995.

LEE S. COHEN
PRIMARY EXAMINER
ART UNIT 335

J. Lacyk/dh
June 16, 1992

# File History Report

☐ Paper number _____ is missing from the United States Patent and Trademark Office's original copy of the file history. No additional information is available.

☑ The following ~~page~~ PTO(s) 1449 of paper number 9 is/are missing from the United States Patent and Trademark Office's original copy of the file history. No additional information is available

Additional comments: _____